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Electronically Filed: July 29, 2010

5
6 UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

7 IN RE:
8 BOZEK, TREVOR T. and MISTY M..

Case No.: BKN10-52977

9 Chapter: 13

10 Hearing Date: October 8, 2010
11 Hearing Time: 2:00
12 Time for Hearing: 5 minutes

Debtor(s)

/

MOTION TO VALUE COLLATERAL

13 MISTY M. BOZEK, the Debtor herein, by and through her attorney, SCOTT N. TISEVICH,
14 ESQ., hereby moves this Court to set a value on certain real property owned by Debtor in conjunction
with the hearing on confirmation of their Chapter 13 Plan.

15 The collateral in question is the debtor's residence located at 10680 Arbor Way, Reno, Nevada
16 89521. This Motion is brought to establish the value of his residential real property at \$ 206,000.00.
17 Since this value is less than the existing First Deed of Trust, the Court is further urged to find that the
18 Second Deed of Trust in favor of ACCREDITED HOME LENDERS, INC assigned to FRANKLIN
19 CREDIT MANAGEMENT, is absolutely unsecured; and upon successful completion of Debtor's
20 Chapter 13 Plan, that said lien should be declared null and void, and stripped away as an encumbrance
21 of Debtors' title.

22 This motion is made pursuant to F.R.B.P. 3012 and 11 USC §506(a), and is based on the
23 Declaration of the Debtor, MISTY M. BOZEK, schedules and statements on file herein, prior
24 pleadings filed with this court and on further oral argument of counsel as may be presented at the time
25 of hearing, and the following Points and Authorities.

26 DATED this 29 day of July, 2010.

27
28 
/s/ SCOTT N. TISEVICH
Attorney for Debtor

1 POINTS AND AUTHORITIES

2 **1. Facts.**

3 The debtor(s) filed for bankruptcy relief on July 27, 2010 under Chapter 13. The case was
4 filed to allow the debtor to reorganize her unsecured debt, cure the mortgage arrears, and "strip" the
5 Second Deed of Trust from the property. The plan is currently set for confirmation on October 8,
6 2010, at the same time as set for this hearing.

7 The debtor is the owner of a residential property located at 10680 Arbor Way, Reno,
8 Nevada 89521. The debtor valued the property at \$ 206,000.00, at the time the Petition was filed.
9 See Schedule A filed with the petition. The property is encumbered by a First Deed of Trust in the
10 approximate amount of \$ 307,725., owing to ACCREDITED HOME LENDERS, INC later
11 assigned to SELECT PORTFOLIO SERVICING (Copy of a statement is attached hereto as Exhibit
12 "1", and incorporated herein by this reference), as well as a Second Deed of Trust in the amount of
13 \$ 47,381., owing to ACCREDITED HOME LENDERS, INC., later assigned to FRANKLIN
14 CREDIT MANAGEMENT. (Copy of recent statement is attached hereto as Exhibit "2". and
15 incorporated herein by this reference.)

16 In the Declaration of MISTY M. BOZEK filed concurrently with this motion, she reiterates
17 the Debtors belief that the current value of their residential property is \$ 206,000.00 based on
18 information on known real estate sales in her area and information obtained on the Zillow.com
19 internet site. As of the date of filing their Petition the current value of this property as shown on the
20 Zillow.com internet site was \$ 206,000.

21 This property value is less than the current principal balance due to SELECT PORTFOLIO
22 SERVICING on its First Deed of Trust on the subject property. According to the most recent
23 statement on said account, as of the date of filing bankruptcy the debtor(s) owed SELECT
24 PORTFOLIO SERVICING a balance of \$ 307,725., for a loan which is secured by a First Deed of
25 Trust on the property.

Inasmuch as the amount owing on the First Deed of Trust is \$ 101,725. more than the values estimated on zillow.com website there is absolutely no collateral securing the obligation of Second Deed of Trust.

As such, the Second Deed of Trust in favor of FRANKLIN CREDIT MANAGEMENT should be treated as an unsecured debt. On or about June 23, 2006, the debtor took out a home equity line of credit loan with ACCREDITED HOME LENDERS, INC., later assigned to FRANKLIN CREDIT MANAGEMENT in the amount of approximately \$ 48,300.00 secured by a Second Deed of Trust on the debtor's said residence. At the time this Chapter 13 was filed the principal balance on the FRANKLIN CREDIT MANAGEMENT Second Deed of Trust loan was approximately \$ 47,381. See Schedule D of the Debtors Petition. Since the debtors obtained the loans described herein above residential property values have fallen drastically in Nevada.

2. Legal Analysis

Not every claim that is, in form, secured by a lien on property will be considered a "secured claim" for bankruptcy purposes. See *In re Zimmer*, 313 F.3d 1220, 1223 (9th Cir. 2002).

The bankruptcy code divides claims into secured and unsecured claims. The value of collateral sets the upper bounds on the amount of secured claims in the case. 11 USC §506(a). To the extent that the value of the property is less than any senior encumbrance the junior encumbrance will be treated as unsecured in fact. FRBP 3012 requires the valuation of property as collateral to be done by motion. Knowing the amount and character of claims is vital to assessing the feasibility of a Chapter 13 plan under 11 USC §1325(a)(6) and determining whether treatment accorded to secured claims complies with 11 USC §1325(a)(5).

In this case, the debtors assert the dramatic reduction in value of their residence has resulted in the ACCREDITED HOME LENDERS. INC., assigned to FRANKLIN CREDIT MANAGEMENT loan becoming wholly unsecured after taking into consideration the claim of SELECT PORTFOLIO SERVICING, the holder of the First Deed of Trust on the property in the

amount of \$ 307,725. Therefore, the debtor is treating the claim of FRANKLIN CREDIT MANAGEMENT unsecured in her Chapter 13 Plan, although the creditor may retain its lien on the residential property until the debtor receives their Chapter 13 discharge. At that point, the Deed of Trust held by FRANKLIN CREDIT MANAGEMENT must be reconveyed to clear debtor's title to his property.

CONCLUSION

The debtor(s) respectfully requests that the Court enter its Order as follows:

1. That this Court enter an Order Finding and establishing the Debtor's Real property located at 10680 Arbor Way, Reno, Nevada 89521 to be valued at no more than \$ 206,000. for purposes of confirming their Chapter 13 Plan, and

2. That in the event that the Court finds that the value of the subject property is in fact \$ 206,000. (or alternatively that the value is less than the amount owing on the First Deed of Trust), then the amount owing to FRANKLIN CREDIT MANAGEMENT in respect to its Second Deed of Trust should be treated as an unsecured nonpriority debt, and

3. That the requested Order should further provide that upon the successful completion of the Debtors Chapter 13 Plan, and full payment of amounts due thereunder, then the lien on said property resulting from Second Deed of Trust be declared null and void and stripped away as an encumbrance on Debtors title to the subject property, and

4. For such other and further relief as the court may deem appropriate under the circumstances.

Respectfully submitted this 29 day of July, 2010.

10.
Scott N. Tischweh

/s/ SCOTT N. TISEVICH

Scott R. Tisevich, Esq.

Nevada Bar No. 5525

241 Ridge Street, Suite 300

Reno, Nevada 8950

1 CERTIFICATE OF SERVICE BY MAIL

2 Pursuant to Federal Rule of Civil Procedure 5(b), I certify that on the 29 day of July,
3 2010. I deposited for mailing in the United States Post Office in Reno, Nevada, with postage
4 thereon fully prepaid, a true and correct copy of the addressed to all interested parties listed as
5 follows:

6 Select Portfolio Servicing
7 2815 South West Temple St
8 Salt Lake City, UT 84115

9 Franklin Credit Management
10 6 Harrison Street 6th Floor
11 New York, NY 10013

12 William VanMeter,
13 Standing Chapter 13 Trustee
14 PO Box 6630
15 Reno, NV 89513

16 US Trustee
17 300 Booth Street
18 Room 2129
19 Reno, NV 89509

20 
21 /s/ Sue C. Birrell
22 Sue C. Birrell
23 Legal Assistant to Scott N. Tisevich, Esq.

EXHIBIT "1"

EXHIBIT "1"

P.O. Box 65250, Salt Lake City, UT 84165-0250

Customer Service
Monday - Friday
Saturday

1-800-258-8602
7:00AM - 8:00PM ET
8:00AM - 12:00PM ET

For other important contact information see the reverse side

#BWNJXZF
Misty Bozek
Trevor Bozek
10680 Arbor Way
Reno NV 89521-4109

**LOAN INFORMATION**

Property Address: 10680 ARBOR WAY
RENO NV 89521

Loan Number: 0011891983 **Current Interest Rate:** 5.375%

YTD Interest Paid **YTD Taxes Paid** **YTD Principal Paid**

\$8,291.51	\$587.11	\$1,359.91
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Current Principal Balance¹ **Taxes & Insurance**

\$307,725.31	\$651.06
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If you have any questions regarding your loan or this statement, please call 1-800-258-8602.

You can access your automated loan information 24 hours a day or make a payment online by visiting our web site at www.spervicing.com or by calling the Customer Service number shown above.

ACTIVITY FROM 06/17/10 thru 07/16/10

Date	Description	Prin Bal	Interest	Insurance	Taxes &	Late	Charges	Unappl	Bal	Other Fees	Expenses Pd by Servicer	Total	¹
06/17	BEG BALANCE	\$307,954.50	\$4,135.05	(\$496.89)			\$562.94	(\$460.62)	\$0.00		\$0.00	\$311,694.98	
06/21	MIS-APP REVERSAL	0.00	0.00	1,147.95			0.00	(1,147.95)	0.00	0.00	0.00	0.00	
06/21	SHORT PAYMENT	(229.19)	(1,374.38)	0.00			0.00	1,608.57	0.00	0.00	0.00	0.00	
06/22	FEF ADJUSTMENT	0.00	0.00	0.00			(482.52)	0.00	0.00	0.00	0.00	(482.52)	
07/02	PROP INSPECTION	0.00	0.00	0.00			0.00	0.00	0.00	13.85	13.85		
07/16	LATE PYMT CHARGE	0.00	0.00	0.00			80.42	0.00	0.00	0.00	0.00	80.42	
07/16	ENDING BALANCE	\$307,725.31	\$2,755.67	\$651.06			\$160.84	\$0.00	\$0.00		\$13.85	\$311,306.73	

IMPORTANT MESSAGES

¹This amount is not a payoff quote. If you want a payoff quote, please see instructions on reverse side.

Any transactions that occurred after the Statement Date noted above will be reflected on your next statement.

²Loan Due Date: If this date is different from your Payment Due Date, it means that you are past due and owe payments from previous months.

You are hereby notified that this statement is an attempt to collect a debt. All information obtained will be used for that purpose.

Under the HAMP program you can earn the right to receive pay for performance credits in an amount up to \$83.33 per month. In order to earn this, you must pay your loan on time.

Statement Date:

07/16/10

Loan Due Date: ²

06/01/10

Principal & Interest:	\$1,608.57
Taxes & Insurance:	\$275.36
Regular Monthly Payment:	\$1,883.93

Past Due Payments:	\$3,720.96
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A) This Month's Payment:	\$5,604.89
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Payment Due Date:	08/01/10
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New	This Period	Balance
Expenses Pd by Servicer ³	\$13.85	\$13.85
Late Charges	(402.10)	\$160.84
Other Fees	\$.00	\$.00

B) Total Additional Amounts Owed	\$174.69
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C) Total Amount Now Due	\$5,779.58
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(A plus B = C)

Your account is now past due. There are a number of options available to assist customers who are experiencing difficulty with their payments. Please contact us immediately to discuss these options, arrange a reinstatement or address any questions regarding this statement at 1-800-635-9698.

³If there is a balance under Expenses Paid By Servicer, it means that we have paid certain expenses on your behalf due to the delinquent status of your account. You are responsible to reimburse us for these amounts plus interest, which may be billed at the note rate.

⁴Due to the delinquent status of your loan, a property inspection and/or valuation report was ordered and you are responsible to reimburse us for the amounts plus interest, which may be billed at the note rate.

EXHIBIT "2"

EXHIBIT "2"

Monthly Mortgage Statement for 07/12/2010

FRANKLIN CREDIT Management Corporation

101 Hudson Street, 25th Flr.
Jersey City, NJ 07302

**MISTY BOZEK
TREVOR BOZEK
10680 ARBOR WAY
RENO, NV 89521**

*Next Payment Due Date:	02/01/2009
Current Payment:	\$382.95
Principal Payment	\$34.07
Interest Payment	\$348.88
Escrow Payment	\$0.00
*Past Due Payment(s):	\$6,893.10
*Unpaid Late Charges:	\$202.49
Other Charges:	\$0.00
Total Amount Due:	\$7,478.54
Statement Date:	07/13/2010
Loan Number:	0002311038
Interest Rate:	8.836%

2026 RELEASE UNDER E.O. 14176

Please visit our web site at www.franklincredit.com for more information on the services we have to offer you!

ACCOUNT ACTIVITY

ACCOUNT ACTIVITY								
Date	Description	Principal	Interest	Escrow	Late Charges/Fees	Miscellaneous	Total	
06/17/2010	Late Charge Assess	0.00	0.00	0.00	-19.15	0.00	-19.15	

ACCOUNT SUMMARY

Principal Balance* As Of 07/13/2010 Interest Paid Year to Date Escrow Balance As Of 07/13/2010 Taxes Paid Year to Date
\$47,381.20 \$0.00 \$0.00 \$0.00

*This is your Principal Balance only, not the amount required to pay your loan in full.

IMPORTANT BANKRUPTCY NOTICE

* If you have filed for Bankruptcy protection or have received a Bankruptcy discharge, this monthly statement is for informational purposes only and is not an attempt to collect a debt. If you filed Bankruptcy and are requesting a payment history or payoff please contact 800-255-5897 or fax request to 201-839-9458.

NEGATIVE NOTICE - Franklin Credit Management Corporation may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. You have the right to dispute the accuracy of information reported to the credit bureaus by writing to us.

BILLING DISPUTES - Please provide the following information when submitting a billing dispute: (1) Your name and account number; (2) The dollar amount of the suspected error; (3) Describe the error and explain why you believe there is an error; and (4) Provide supporting documentation including but not limited to, copies of cancelled checks, receipts or other evidence supporting your claim. Should you require additional information regarding your account, please describe the issue(s) which require clarification.

Please forward all billing disputes, disputes on the accuracy of information reported to credit bureaus or inquiries to:

**Franklin Credit Management Corporation
PO Box 2303
Jersey City, NJ 07303-2303
Or Fax to: 201-839-4351**

While we are investigating your dispute, you are obligated to pay the parts of your billing that are not in question. You may contact Franklin Credit Management Corp.'s Customer Service Department at: 800-255-5897

SEE REVERSE SIDE FOR IMPORTANT INFORMATION